

EXPANDED DRAFT MEETING SUMMARY
THIS IS NOT AN OFFICIAL TRANSCRIPT OF TAPE RECORDED PROCEEDINGS
THE INFORMATION CONTAINED HEREIN HAS NOT BEEN REVIEWED OR APPROVED BY THE ZBA

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 24, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 24, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair
JP Boucher, Vice Chair
Mariellen MacKay, Clerk
Robert Shaw
Kathy Vitale

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. Lisa Clermont (Owner) 73 East Glenwood Street (Sheet 129 Lot 137) requesting special exception to maintain an existing accessory (in-law) dwelling unit. RA Zone, Ward 7.**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Robert Shaw
Kathy Vitale

Michael Demers, 16 Wood Street, Nashua, NH. Mr. Demers said that he is appearing on behalf of his sister, who is unable to attend. He said that when his sister and brother-in-law bought the property, it came with the in-law apartment. He said that they've owned it for about 35 years. He said that they did use it for adult family members. He said that a building permit was

never issued for it, and they'd like it to be legitimized by the City so there are no issues later on.

He said that from the street, you'd never know it's in there, and no changes are proposed inside or outside the property. He said that there is enough parking for about six to eight cars, but traditionally, there are about two or three cars in the driveway. He said it is about 650 square feet in size, and meets the size and percentage requirements. He said it was professionally done, and there have never been any complaints from the neighbors about it.

Mr. Currier went over the points of law for an accessory dwelling unit, and all of the special conditions are met.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Shaw to approve the special exception on behalf of the owner as advertised for the accessory dwelling unit. He said that the Board finds that it is listed in the Table of Uses, Section 190-32. He said that it will not create undue traffic congestion or unduly impair pedestrian safety, and it will not overload public water, drainage or sewer or other municipal systems. He said that the special regulations are all met per testimony.

Mr. Shaw said that it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

2. MVSS Realty, LLC (Owner) Douglas Pauly (Applicant) 3 Bud Way (Sheet E Lot 1353) requesting use variance to allow vehicle repair and sales, and sale of vehicle parts. AI Zone, Ward 1.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Kathy Vitale
Rob Shaw

Douglas Pauly, 33 Prescott Heights Road, Hooksett NH. Mr. Pauly said that he submitted a letter to the Board describing himself and his business. He said he's been in the automotive industry for about 25 years now, and has had a couple auto repair businesses. He said that he's aware that a similar business was denied at this building in 2010. He said that he runs a tight ship with no cars stored outside, and the sales portion will not include a used car lot, he said he's very specialized, working on only VW and Audi, and typically works on newer cars.

Mr. Pauly said that he uses the silent air tools, and has a screw-style air compressor, and is aware that noise concerns have been raised in the past. He said that he caters to a high-end clientele and doesn't intend to grow into a huge business, and wants it small with just a couple people in the shop.

Ms. Vitale asked what he'd need to do to get the space ready.

Mr. Pauly said right now, it's an empty box, there is an office there, but it's in shambles. He said the walls are just concrete block, since it's an end unit. He said he's going to gut it, stud off the walls, insulate it, and put in the exhaust system with a vent going through the roof.

Ms. Vitale asked about deliveries, pick-ups, oil.

Mr. Pauly said that for oil, he carts it off himself in drums, and a friend of his has a waste oil furnace. He said he never stores more than 60 litres at a time. He said he gets one or two parts deliveries per day, and UPS once in a while. He said he's anticipating about ten vehicles per week for servicing.

Ms. Vitale asked how many of the neighboring businesses has he spoken to directly.

Mr. Pauly said he spoke with Ms. Hoecker's real estate agent, and the neighbor directly next door, who owns two units, and he has no issues, and he's spoken with a couple of the other people

in the building, and didn't hear any negative responses. He said he put the variance sign outside.

Mr. Boucher asked to confirm if there are any cars stored outside.

Mr. Pauly said that there won't be any cars stored outside. He said that the unit is 1,800 square feet. He said that the building does not have any assigned spaces, but he said that there shouldn't be any problems with parking, and no cars will be left in the parking lot. He said he just does service and maintenance, nothing like an engine job. He said it shouldn't be a noisy place.

Mr. Shaw asked about the ten cars.

Mr. Pauly said it would be ten cars throughout the week, a total of ten.

Mr. Shaw asked how many vehicles could be expected to store inside.

Mr. Pauly said he should be able to store 7-8 cars inside. He said he proposes two service lifts, and an alignment lift.

Mr. Boucher asked about any special permit requirements.

Mr. Falk said that the exhaust has to be directed outdoors, and it will have to meet all building and fire codes. He said that the Fire Department will look at anything flammable such as oil or gas.

Mr. Pauly said he'd be putting in 5/8's sheetrock.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Currier said that there are two letters of objection, from Richard Poyant of Suite 19 and Patrick Albert from Suite 20. He summarized the objections in the letters. They mentioned that the top of the units aren't sealed, and there is concern about the exhaust permeating in other spaces. He said that the

letters mention sound, odors, fumes will travel through the top, and there isn't sufficient parking, and it's out of character with the spirit of the association.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Pauly said for the parking, he said that there are also spaces in the back of the unit, as well as in front of just about every other unit. He said as far as the fumes and odors, he said it's his intention to seal, and he said at the top, it's all open steel trusses, and there's very little insulation, so the intention was to close off the trusses, seal it and insulate it, as right now there is only a two inch foam insulation on the roof, so, he thinks there's an old misconception that the use is a dirty old school type of garage that people may be concerned about, but that won't be the case. He said he's open to stipulations for approval.

Mr. Currier asked about the difficulty of finding a place for this use.

Mr. Pauly said it's been very difficult trying to find a space for this, he said that there just isn't anything available. He said that the space is exactly what he needs.

Ms. Vitale said that she's generally in favor of it, and the applicant has addressed the topics of concern, and he'll have to meet the Fire codes and all other ordinances that we have in the City, and he's going to have to meet EPA standards as well.

Mr. Shaw said he's in favor of the application, he agreed that there is a lot of perception, going back of how auto repair was thirty or forty years ago. He said it's pretty clear that the use is really focused, and is one that will not generate those concerns, and by all appearances is going to be doing all the right things as far as construction and tool usage, and even the noise issue. He said that they heard issues about the parking, but that's the Condo association's issue, and didn't see this business will bring an excess of cars, and the storage of cars outside would be a concern, but they'll all be inside.

Mr. Boucher said he's in favor of the application. He said that the Board deals with this more on the Amherst Street corridor, but this site is in that pocket at the end of the runway. He

said it's like a transition area, and the use fits into the area, and there won't be any outside storage.

Mrs. MacKay concurs, the applicant has taken a lot of time and put a lot of thought into his application. She said he considered the issues so when they came up, he has an answer to mitigate them. She said it will be small, and there won't be cars stored outside, and in a motion should it be approved, there should be something where they must meet EPA standards.

Mr. Boucher said that body shops, with the paint, the staff have to be fully suited, with breathing apparatus, where mechanics do not. He said that the City has safety codes in place for the building.

Mr. Currier said he's struggling to find support for the application. He said he's a bit leery of the opposition in terms of the noise and the odors travelling up and through the building. He said that he's concerned that it could get out of control pretty easily if there wasn't a conscientious owner. He encouraged the stipulations that were previously discussed.

MOTION by Mr. Boucher to approve the use variance application for MCVSS Realty, LLC, on behalf of the applicant as advertised. He said that a zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment, and that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others. He said that the Board discussed that the applicant testified that he spent a good enough time looking for suitable property in Nashua, and this property suits his needs.

Mr. Boucher said that the applicant will be using tools of the trade that will reduce noise significantly, and he is cognizant and is concerned about his immediate neighbors.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance, and it will not adversely affect property values of surrounding parcels, and there was no testimony on that one way or another. He said that the request is not contrary to the public interest, and that substantial justice is met.

Special Conditions are applied to the approval, the first one is that there will be no outside storage, no vehicles other than a customer that would be dropping off a car for repair after hours, and that the unit will be fully enclosed from all other units, which speaks directly to the fact that the concerns of any fumes or noise or anything deviating into other units that was testified that there was an open gap in the ceiling. He said that the applicant has agreed to this stipulation. Also, that the applicant will use low noise air compressor based tools and will use the exhaust system year round.

Mr. Shaw said that for the use being less impactful, it's an end unit, and the owner of this unit owns the adjacent unit, so the impact to other owners in the condo structure is such that the nearest neighbor is two doors away, and the adjacent unit is in full support of the application.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Currier).

3. Erlanio Rodrigues (Owner) 83 Pine Street (Sheet 85 Lot 80) requesting variance to allow outdoor storage of vehicles within 50 feet of a street. RC Zone, Ward 4.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Paul Caetano, 16 12th Street, Nashua, NH. Mr. Caetano said it is a very small lot, it's almost across the street from the existing auto repair shop, it's a funny shaped lot, it's like a triangle, it's too small for a dwelling to be built there, it's been abandoned, so Mr. Rodrigues bought it, cleaned it up, and wants to use it as an overflow lot, he wants to pave it, put up a privacy fence, some evergreens up front, make it appealing to the eye, like the shop, and improve the looks of the neighborhood, and make everybody happy.

Mr. Currier said that within fifty feet of the street, it almost seems like the whole lot is within the fifty feet.

Mr. Falk said a majority of the lot is within the fifty foot line, and stated that the lot is only an average of 75 feet deep.

Mr. Currier asked if they would still be here if they could meet the fifty foot distance.

Mr. Falk said that if there is any storage of anything, materials or vehicles, it would be a Conditional Use, subject to Planning Board review.

Ms. Vitale asked if the vehicles in the lot will be regularly going to the auto repair business.

Mr. Caetano said a tow truck would be there, and two or three employees vehicles. Some cars will be there waiting for an insurance adjustor to come, or will be waiting for parts.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. He said that the variance is needed to enable the applicant's proposed use of the property, which is storage of repair vehicles, and employees vehicles for a nearby business.

Mr. Currier said that the Board finds that the proposed use would be within the spirit and intent of the ordinance, the Board finds that it will help to relieve parking issue in this area. He said that with a cleaned up lot, it will not adversely affect property values of surrounding parcels. He said that the request is not contrary to the public interest, and that substantial justice is met.

Mr. Currier said a condition of approval is that the owner is to maintain a privacy fence around the property.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Currier said that the next case will essentially be about the definition of elderly housing. He said that an application has been brought forth to the City, at 122 Manchester Street, for an elderly housing development. He said that staff determined that the project meets the definition of elderly housing, however, there are abutters who are appealing the decision of staff, and they believe that the application does not meet the definition of elderly housing. He said that what is not before the Board this evening is parking, or building density, or other similar issues, the Board will only be focusing on the definition of elderly housing.

Mr. Shaw said that a lot of letters were submitted, and most of them raise issues that the Board cannot consider, as most of them are Planning Board issues, and tonight's discussion is more narrowly defined, the question is whether or not the usage of land meets elderly housing.

Mr. Currier said that if the Board determines that this does meet the definition of elderly housing, the application would then go to the Planning Board to be reviewed for parking, density, etc. He said if the Board decides that it does not meet elderly housing, then it will have to come back before the Zoning Board for a use variance and a variance for the number of principal structures on the lot. He said another issue came up at the Planning Board meeting about a rip-rap wall and whether it goes against open space, but that is not before the Board tonight.

Mr. Shaw asked about this case already going to the Planning Board.

Mr. Falk said that the applicant believed they did not need to go to the Zoning Board, and they did go to the Planning Board, and they tabled it pending the outcome of the appeal before the Zoning Board.

4. Gary Wingate, 15 Sherman Street (Sheet 59 Lot 154); Michael Zagrodny, 11 Danbury Road (Sheet 137 Lot 145); Samuel Kouchalakos, 9 Danbury Road (Sheet 137 Lot 137), and John

Bianchi, 7 Danbury Road (Sheet 137 Lot 153), appealing the decision of the administrative officer that a proposed elderly housing development located at 122 Manchester Street (Sheet 59 Lot 135) will provide significant facilities and services designed to meet the physical and social needs of older persons. RA Zone, Ward 2.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Attorney Barbara Hantz, Sheehan Finney Bass & Green, 1000 Elm Street, Manchester, NH. Atty. Hantz said she represents the four people in the advertisement, who are abutters and their homes surround the development. She said that other letters have been submitted, and indicated that there are other issues in all these letters that are not before this Board.

Atty. Hantz said that the proposal is for a five building project, and elderly housing is permitted in the RA zone, as long as it meets the requirements of Section 190-42 A. She said in a letter from Atty. John Sokul, Mr. Falk determined that the proposed programs and services associated with the project qualified it as elderly housing, and that this determination reversed an initial preliminary decision that in fact it did not, and that decision was not appealed. She said that they are appealing the decision that says it is.

Atty. Hantz said that Section 190-42 A provides six categories for projects that qualify for elderly housing, congregate living facilities, assisted living, life care or continuing care communities, community care facilities, continuing care retirement communities, skilled nursing services or nursing care facilities are not part of this project. She said the last category, homes for the elderly, that is the closest category but we disagree that this project qualifies as homes for the elderly. She said that homes for the elderly require significant facilities and services specifically designed to meet the physical and social needs of older persons, pursuant to the Code, and those services are not present here. She said that the care typically includes room, board, supervision and

assistance in daily living, such as housekeeping services. She said establishments may include assisted living facilities, with on-site nursing care, homes for the aged, homes for the elderly, senior citizens homes without nursing care, but it speaks in terms of homes, not in terms of individual residences for over 55-age individuals. She said that what is proposed is a 55 and over community, and only 80% of the units have to be age-restricted, and it does not qualify as elderly housing.

Atty. Hantz said that they won't be providing primarily residential and personal care services, the proposed services in the application include some social and recreational activities, continuing education, counseling, property and building maintenance, some handicapped accessibility, and preventative health care programs through a variety of organizations. She said that there will be no staff associated with this development, it's for 18 units with an 800 square foot common room. She said that they will rely on a property management company to provide the services, and/or the residents who can create their own community services.

Atty. Hantz said at this time, they are not aware of any project management company that has any expertise or experience in providing the kind of social services that are intended to be included in elderly housing. She said that they're not the sort of services, such as games, entertainment, educational proposals, are not the sort of services that are geared toward increasing the residents ability to live independently, or providing care for those who can't fully care for themselves.

Atty. Hantz said that in addition to failing to fall under one of the elderly housing classifications, the proposed services do not rise to the level of significant facilities and services, specifically designed to meet the physical and social needs of older persons. She said that organized card games, movies have been mentioned, some educational and health care programs intended to be provided in this area, is insufficient to support actual meaningful services for the elderly. She said that the project is getting a density bonus, this lot qualifies as one lot, given its frontage, anything more than that, even subdividing it into two lots, there is insufficient frontage. She said that the lot would need a variance for more than one building on the lot in the RA zone. She said that there is sufficient square footage on the lot, likely for more than one

residence if you could provide additional frontage, but nowhere near the density of 18 units that the elderly housing allows.

She said that the motivation here is to increase the density to 18, and by adding a road in and making it a single family lots, they couldn't get in more than half a dozen if that, because of the configuration of the lot. She said that the density bonus here is very significant. She said that when you are actually not providing what the ordinance is looking for, which is a real meaningful proposal for housing for the elderly, we don't feel that it earns that density bonus.

Atty. Hantz said that the elderly housing and the services that go along with it has been evaluated by the NH Supreme Court in a different context, because elderly housing can in some circumstances earn a charitable tax exemption, and certain organizations are considered charitable, and there's also a separate tax exemption for elderly housing units. She said that the Court has found that if it's simply housing, it doesn't qualify for that charitable exemption, you have to have enough services to show that you are actually facilitating older folks living independently and providing support for those things they cannot do on their own. She said that basic retirement housing doesn't qualify, you have to have meaningful services for the older retired people, services that are akin to assisted living services or nursing care services that are available is what satisfies that criteria.

Atty. Hantz said that in the ordinance, new developments have to have a minimum of 30 units to be considered, and this should be considered new development, as opposed to redevelopment, repurposing a building you need to have a minimum of ten units. She said that they consider this a new development, not a redevelopment.

Atty. Hantz passed out a copy of her presentation to the Board members.

Mr. Shaw asked for some clarification about her last comment about the thirty units for new developments versus redevelopment.

Atty. Hantz pointed out, and read Section 190-42. She said that the density bonus for elderly housing only applies pursuant to language of the ordinance to projects consisting of more than

thirty units in the case of new development, and more than ten units in the case of redevelopment of sites.

Mr. Shaw said the density bonus, whether it should be applicable or not, is depending upon how this part is interpreted.

Atty. Hantz said that there are two other elderly housing projects in the recent past, Stinson Park and Hayden Green. She said that neither one of those projects addressed this issue. She said the Hayden Green project had a lot to do with wetlands and the water tank, and the other one was subdivided off from the Diocese, so it didn't have a lot of issues. She said that she isn't sure of the density bonus for these sites would have made a difference, and it didn't come up in the meetings.

Mr. Currier asked about the benefits, and whether they're provided by a staff or the residents themselves, and the point was that in this proposal, the benefits are essentially provided by the residents themselves, versus a professional staff. He asked if they feel that the State definition is that a professional staff has to be there to care for physical needs, like nurses, and asked if that is what they need to provide to meet the definition of elderly housing. He said it's unclear of what is enough.

Atty. Hantz said it's just not professional staff, but agrees, that is the issue and it's not well-defined. She said that having actual services, people need rides to places, having a link to services, people might need help with meals. She said the language in the Ordinance seems to talk about assistance with daily living, helping people that can't live independently, or don't want to. She said that there are other issues, like safety, meals, socialization, so it doesn't have to be a professional staff, but it has to be more than something on a bulletin board with some phone numbers.

Mrs. MacKay said for independent living skills, that does for individuals with disabilities or elderly require a DSP (direct support provider), which is what Mr. Currier referred to, that's professional. She asked if there has to be some kind of professionalism attached to it, and asked if she is stating that these are 18 independent units with one common room where people can watch a tv or say hello, but no one to help with meal preparation, no skilled nursing staff for medication issues, no

one there in case something happens to someone, no 24-hr presence, no one providing recreation, etc.

Atty. Hantz said that's the way it's being described, presented to the City, and the reliance will be on residents to choose what services they want, and a property management outfit to supply those services. She said in the category of Homes for the Elderly, the abutters feel that there is nothing that distinguishes this from any other condominium.

Atty. Hantz said that the definition states that Homes for the Elderly comprise establishments primarily engaged in providing residential and personal care services for the elderly that are unable to care for themselves, and/or persons that do not desire to live independently.

SPEAKING IN FAVOR (OF THE APPEAL AGAINST CITY STAFF'S DECISION) :

Jeff Eckberg, 128 Manchester Street, Nashua, NH. Mr. Eckberg said he lives directly to the right of 122. He said he's worked with long term assisted living and nursing care for the past twenty-one years, and works as a director at a skilled nursing center outside of Boston.

Mrs. Eckberg, 128 Manchester Street, Nashua, NH. Mrs. Eckberg said she is an occupational therapist, and specializes in teaching activities of daily living, and independent activities of daily living.

Mr. Eckberg said that staff asked the applicant for evidence that would show that it is elderly housing providing supportive services to be considered as elderly housing, and the facilities and services be provided in a meaningful manner. He said that the word meaningful is very important in the health care field. He said the definition of meaningful itself cannot be a qualitative measure alone, it requires a quantitative analysis process that includes measures, and nothing shown from the applicant indicate a qualitative measure. He said bingo, cards, tv and a computer in a separate room does not suffice, and said that the list the applicant provided is redundant, many of the nine categories say the same thing, and the recreational programs show activities that are not taking place here, they're at senior centers somewhere else. He said that nothing provided is meaningful, and nothing they provide will really stand out.

Ian Atwell, 118 Manchester Street, Nashua, NH. Mr. Atwell said that he sent a letter of opposition. He said he's lived in several condominium complexes and the services that are proposed are things that are offered at every condo complex, the games, and holiday parties. He said he doesn't believe its elderly housing.

Mark Littlefield, 120 Manchester Street, Nashua, NH. Mr. Littlefield said that none of what Attorney Sokul has indicated seem to complete the physical and social needs of elderly housing, and doesn't see how it complies. He said that movie nights, board games, reading material, nothing here will cost the management company anything, and there's no staffing, and maybe the management company will manage the building and grounds, but not the physical and social needs of the elderly. He asked who will oversee the future compliance. He said if this complies and is supported, it will have a great impact on the neighborhood because of the density.

Tracy Gilman, 3 Edith Avenue, Nashua, NH. Mrs. Gilman said that she is an occupational therapist, and has spent the last 30 years working with individuals to become as independent as possible, and to place someone in a house or condo with a separate room across the way, and hope they make it, is not considered supportive housing, so the definition is in question.

Michael Zagrodny, 11 Danbury Road, Nashua, NH. Mr. Zagrodny said that they're opposed to this project for many reasons. He said that he doesn't feel that the project meets the criteria for elderly housing, and shouldn't qualify for the density of 18 units. He said that the whole neighborhood is not in support of this project, and asked that the letters submitted be thoroughly reviewed.

Mr. Falk said that a lot of letters were received, and every one of them was forwarded to the Zoning Board members, and also to Attorney Sokul.

Mr. Falk said that the letters are from Gary Wingate, Brenda Wingate, Samuel Kouchalakos, Tracy Gilman, Holly Countie, Mark Littlefield, Ian Atwell, Michael Zagrodny and Jeff Eckberg.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS (THOSE IN FAVOR OF STAFF'S DECISION):

5-Min recess by the Board.

Attorney John Sokul, Hinckley Allen & Associates, Concord, NH.
Atty. Sokul asked for a little extra time for his presentation, the Board voted to allow him 15 minutes.

Atty. Sokul said he's representing Granite Green Investments, the developer, and said that James Prieto, a principal of the company, is handing out a package for the Board members.

Atty. Sokul said that they're not proposing a Congregate Care Facility, or Assisted Living, or a Continuing Care Retirement Community. He said they are proposing an over-55 elderly housing project, which is allowed under the terms of the Nashua Ordinance. He asked where the concept of significant services and facilities comes from. He said under Federal law, the Federal Fair Housing Act protects citizens against discrimination. He said that that Act specifically exempts some types of senior housing from the discrimination requirements. He said that those types of senior housing you can discriminate against familial status, and those types of housing are: 1) housing provided under any State or Federal program that HUD has determined to be designed and operated to assist elderly persons, 2) housing intended for solely occupied by persons 62 years of age or older, and 3) intended and operated for occupancy by persons 55 years of age and older.

Atty. Sokul said that there are, therefore, three types of housing that qualify for that exemption under the Federal Fair Housing Act. He said that under current Federal law, to qualify for the over-55 exemption, a facility must have at least 80% of the units have at least one occupant who is 55 years of age or older, and the facility must publish and adhere to policies and procedures that demonstrate the intent to operate 55 and over, and the facility must comply with HUD regulatory requirements for age verification of residents. He said that originally, HUD had a series of regulations that specified these facilities and services, and in tab 3 of the material that was passed out, with examples of the types of services and facilities that need to be provided for each category.

Atty. Sokul said that it used to be, this regulation, was repealed in 1999, as being overly restrictive under a Federal Law Amendment to elderly housing, so this whole regulatory regime went away as being too onerous for elderly housing.

Atty. Sokul said that to comply, you had to offer at least ten of these items, two examples from category 10, leisure needs and category 11, accessible physical environment. He said that the applicant is proposing 36 of these items, where 10 would have been required, or used to be required before the regulation was repealed.

Atty. Sokul said that New Hampshire has the same regulatory regime, the exact same three types of elderly housing is allowed, and, until 2006, New Hampshire had a set of regulations containing 12 categories of services and facilities that would be sufficient for elderly housing, and that is set forth in Tab 5. He said that the Nashua ordinance makes specific reference to over-55 housing. He said that the New Hampshire regulations expired in 2006, but has not been replaced yet. He said he spoke to the Executive Director of the NH Human Rights Commission, and they are thinking of promulgating new rules, but it will take at least 60 days, and the Governor has put a kibosh on new rules and regulations until March 31st, so it's unclear when and if any new rules come to New Hampshire.

Atty. Sokul said in looking at the Nashua ordinance, in the preamble, it says that older persons are exclusively people age 55 and over. He said that the Master Plan indicates that the number of people 55 and over will increase significantly, and it recognizes that an exclusive zoning for persons 55 and over promotes the general health and welfare. He said that for purposes of elderly housing it talks about examples of uses that constitute elderly housing include the six items that Atty. Hantz mentioned. He said if you look at the compliance section, it says that the applicant shall certify that at the time of an application before the Planning Board, that a development will comply with all applicable rules and regulations established by the NH Human Rights Commission, age discrimination, and housing, including, if required, that every development shall provide significant facilities and services, specifically designed to meet the physical and social needs of older persons. He said that at the end of that section, it says that in the event the foregoing 55 year old age restriction is determined to be in violation of the laws of the State of New Hampshire, then in order to qualify as housing for older persons, the development must contain an age restriction that complies with the NH RSA's.

Atty. Sokul said that this project also precipitated a proposed amendment to the ordinance, and that amendment is now purporting to add the same twelve examples of categories of elderly housing facilities and services that were in the NH Regulations that was repealed. He said that they came in and met with City Staff, Carter Falk, Roger Houston, Sarah Marchant and Steve Bolton, and went through the list, item by item, category by category, and came up with staff's determination that what was proposed satisfies the Nashua ordinance, and the developer wanted to do that even though the State's regulations no longer exist, and the Federal regs no longer exist, but wanted to make sure the proposal was bulletproof.

Atty. Sokul said it's true, there will not be any on-site staff, but this over-55 project is providing much more than the two over-55 projects that were previously mentioned, Stinson Park and Hayden Green. He said that the minutes from those meetings are included in the package, along with what their condo documents say, and for Stinson Park, what they actually provide for facilities and services, which are much much less than what is proposed.

Atty. Sokul said that item #10 in the handout is what is proposed at 122 Manchester Street. He said that it is far more extensive than anything that has been required from any applicant in Nashua going for the 55 and over exemption. He said that both of those two projects took advantage of the density, so for those reasons, 55 and over housing is allowed by the Nashua ordinance, it's more than any other similarly situated applicant, it complies with State and Federal laws, and those are also referenced in the Nashua Ordinance, and they believe that they comply with the terms of the Ordinance. He said that they're not Assisted Living, Congregate Care, they are an over-55 independent living, which is a certain type of elderly housing that is expressly allowed in the Ordinance.

Mr. Boucher asked for an explanation about Section B, part 3 of the Ordinance.

Atty. Sokul said that issue is not before the Board tonight. He said that is to mean that they have a site that is previously developed, and now it's being redeveloped with more than ten units.

Mr. Boucher said it's in Tab 6, page 18 of 57, Section B, paragraph 3.

Atty. Sokul said he believes that this is a redevelopment project, as the site was already developed.

Mr. Shaw mentioned that the testimony for Stinson Park and Hayden Green was that they utilized the density bonus.

Atty. Sokul said that is his understanding, and that's why they went through as elderly housing.

Mr. Falk said those two sites are different, Stinson Park is split-zoned between Airport Industrial and R9, it's by the airport, so there are different zoning densities involved. He said that Hayden Green is a much different development, as there is a very large multi-family building, and they also have single family homes and it's also a split zone.

Atty. Sokul said that both of those projects are supposed to have significant facilities and services, and their condo docs refer to those, and the proposed condo docs go far beyond with assurances and guarantees. He referred the Board to Tab 10, a letter to Carter Falk, these items follow exactly verbatim the State regulations that have expired, and what's proposed in the new ordinance, whether or not it will be adopted, and tried our best to comply with the spirit and intent of the ordinance. He said that the City is trying to add these things in now, as the cross-reference to the State regulations is no longer effective, as the State regulations have expired. He said that out of the 12 categories that the State regulation used to have, the proposed project is proposing 9, and the proposed ordinance says that you must meet half of them, and the State statute is clear that you didn't have to comply with all of them. He said that they've gone above and beyond what any other elderly housing project was required to do. He said that they're locked in and vested from the new ordinance.

Mr. Currier asked to clarify the professional services indicated in the condo docs.

Atty. Sokul said in Section 10, Article 15, deals expressly with elderly housing restrictions, stating that the condominium is developed pursuant to the City of Nashua land use code. He said

it also indicates that the City has the right to enforce these things.

Mr. Currier asked about what the assistance would be, he said he did see something, in point E, Tab 10 at the bottom, about services to assist residents with maintenance and upkeep of buildings and grounds, and there is a management company, and asked if it is a professional management company like a property management company, that plows snow and mows grass.

Atty. Sokul said that there would be a company like that, but the applicant has been in touch with several other providers and management companies that have experience with elderly housing projects, and that is what he wants to hire, and that's what he intends to hire for this, someone used to providing these services, someone used to coming on site to give lessons and seminars. He said that the Federal regulations are pretty clear, management companies are allowed to do this, and they can do it both on-site or off-site, as long as there is public transportation and other things reasonably close to the facility. He said that there is a bus-stop twenty feet away from the entrance to the site, and the hospital is 1.9 miles away. He said even though it's going back to 1999, that's where this whole concept of significant facilities and services came from. He said that some of the things are pretty hokey, like bingo and tv and vcr's, maybe they are, but they are guaranteeing these categories will be met, the actual owners and occupants of the project, they will have the opportunity to decide what types of things under those categories will be provided, as long as those categories exist and are in use. He said that the condo docs also require that a subcommittee, which could be only one person, as there are only 18 units, be established to ensure that these things are provided and used, operated, and to coordinate with the management company, it's not intended to be an empty promise, these things are going to get recorded at the Registry of Deeds, they'll be in people's deeds, and they'll work with City staff to make sure they're happy with what goes on record to ensure. He said that they're trying to go by the rules, that's why they met with Attorney Steve Bolton, Carter Falk, Roger Houston and Sarah Marchant, and went through this line by line, item by item.

James Prieto, Granite Green Investment Partners, Principal, 170 S. River Rd, Bedford, NH. Mr. Prieto said that he's had conversations with different organizations that has experience

with providing disabled people, elderly populations, people with some disabilities, they'll be the ones providing the services in conjunction with a property management group that will take care of the condo dues and making sure that things will be maintained and plowed, they won't be responsible for the health and welfare and needs of the residents.

Carter Falk, Deputy Planning Manager, Community Development Department, City of Nashua. Mr. Falk said that there is an ordinance that is proposed before the Board of Aldermen that has already been before the Planning & Economic Development Committee, it's been revised and is in the process, and the applicants plan would conform to nine of the twelve different categories that are listed as required for an elderly housing development.

Mr. Falk said he didn't think that a density bonus was given here, its 2.38 acres, and in the RA zone, Table 190-42, it does allow multi-family at 8 units per acre, so they'd be allowed 18 units. He said that density bonus is given for Inclusionary zoning, which is more about income level, and how many units are available at certain low and moderate income levels.

Mr. Falk said that City staff has met with Atty. Sokul and at first when they submitted a plan, we didn't feel that it met the ordinance to qualify as elderly housing, and at a subsequent meeting, they did supply information that we believe met the ordinance.

Mr. Shaw asked if someone were to propose 18 units in a single multi-family structure, on this 2.38 acre parcel in the RA zone, would it be permitted.

Mr. Falk said that the Code does allow for a duplex or multi-family at 8 units per acre in the RA zone. He said that just by its nature, elderly housing in a multi-family setting does imply that there could be multiple buildings, instead of just one building.

Tom Prieto, 41 Raymond Street, Nashua, NH. Mr. Prieto said that he suggested his son, James, hire the best attorney he can, and meet with Carter Falk, Attorney Bolton, Sarah Marchant and Roger Houston and make certain that you follow the ordinance. He said that the advice of the City's Legal Counsel, and the Planning Department staff, that it did meet the ordinance. He said that

is why they submitted, and have continued with this, but if they can't rely on City staff and the City's Corporation Counsel to make a determination to move forward or not, that is a problem. He pointed out to Section (tab) 7 of the package, he said that Mayor Donchess proposed a new ordinance, O-16-xxx, and if you look at Section 2, the first page, and then go to the second page, then the third and fourth page, then the fifth page, you'll see under section 2, a, b, c, d, then k and l. He said that these are under the new clarification that the Mayor is proposing, which are similar if not exact to what his son has proposed. He said that City staff, when they went through and made a determination that his son's project meets the ordinance, they're even proposing a clarification which has the similar ones. He said that this isn't made up, not dreamt up, it's under the ordinance, and City officials have made a determination that it meets the ordinance.

**SPEAKING IN FAVOR (OF THE APPEAL AGAINST CITY STAFF'S DECISION)
- REBUTTAL:**

Atty. Hantz said that the reference to the over-55 language in the Federal and State regs, she said that there are two divergent purposes, yes, the Federal and State regs came into existence because the issue was discriminating against people with families, kids, so the purpose for those regulations was, yes, recognizing that there can be a reason for over-55, or mature adult, or elderly communities, you're allowed to discriminate against families with kids by restricting the community, and 80% of the units can be older folks over 55, without kids, and 20% fall outside that restriction, those regs were developed for that reason.

Atty. Hantz said that this ordinance, by its purpose, was developed for a different purpose, to provide living accommodations for a group of people who need more than four walls and a roof, and you get that from the categories that are defined in the ordinance, Congregate Living, Assisted Living, Life Care, Community Care, Continuing Care Retirement Communities that definition is very similar, establishments primarily engaged in providing a range of residential and personal care services with on-site nursing care, contrast that with homes for the elderly, establishments primarily engaged in providing residential and personal care services without on-site nursing facilities. She said that the two groups are the same, the elderly or other persons who are unable to fully care for

themselves, and/or the elderly or other who do not desire to live independently. She said even when her mother was 81, she had a hard time following when the plow guy was going to come, and now is in a community with staff and there's no way she could manage figuring out what should be on the schedule. She said that the point is relying on the residents or the condo board in this community to provide services to help people who are unable to care for themselves is just not sufficient to follow this ordinance's definition for providing significant services. She said that the definition for Federal and State regs were to qualify something to allow it to discriminate. She said that this is providing a specific kind of housing, so they have to be evaluated differently, because there is reference to the Federal and State regs means that it can be developed this way, but whether it satisfies what Nashua is trying to do, which is to provide supportive services for the elderly, is a different question. She said a bus stop being nearby is not the same as providing transportation services for people who can't drive or can't find their way to the bus stop, who can't walk the 1.9 miles to the hospital, it's just not sufficient.

Atty. Hantz said that on the development/redevelopment side, these terms are defined in the ordinance. She said that redevelopment is a development, rehabilitation, expansion and completion of phased projects on previously developed sites. She said that it's not this project, they're tearing down a single family home, and up go five buildings. She said that new development is any building permit application that is submitted to the City that results in the construction of new dwellings, yes, or the conversion of an existing non-residential use to a dwelling. She said that they do not believe that this is redevelopment, and that it is new development. She said that as far as the other two developments that were mentioned, while this one may be providing more than they did, those ones weren't tested, and so this Board has to deal with this application, and whether it meets the ordinance, whether those two could have been appealed and the Courts may have determined a different outcome, isn't really relevant for here, what they provide, and even though this development wants to mimic what they might have provided in their condo docs, it doesn't mean that any of these developments meet the ordinance definition for supported elderly housing.

Mr. Shaw said that the applicant is stating that it's a redevelopment site, whereas new development is on a site that

wasn't developed at all previously. He said that he's hearing that the single family home on the lot doesn't rise to the level of sufficiency, as a lot of the property is left in its natural state.

Atty. Hantz said it's a small house, and all the land around it is being developed.

Mr. Currier said the terms Congregate Care, and Skilled Nursing were brought up, and this project is not that, but what we're hearing from Atty. Sokul is that's not the definition any more, that maybe the bar has been lowered, and asked her for her response to his interpretation.

Atty. Hantz said that there are six categories of the ordinance, so maybe they're outdated, because Congregate Care is defined as establishments that serve meals and other services, so Congregate Care is one of the six categories that qualify. She said that Assisted Living Services, which helps people in their daily activities, Life Care Community Care, you get all the way down to the end and you get the definition for Homes for the Elderly. She said she's not saying that this needs to be a Congregate Care, with three meals a day, but it needs to be more than condominiums for older people. She said for the new ordinance, whether the new twelve things are sufficient, for the goal of this ordinance, she said she doesn't know, she said as Atty. Sokul said that we're stuck with what we got here, and this is the ordinance as it's defined right now, and quite frankly, while the nine things may meet the Federal definition of 55 and over, they're wanting to encourage that sort of housing for an aging population, she said she's not sure it meets significant services for the elderly, and the nine things they propose are fairly vague, and fairly left open to interpretation, they'll be provided by the management company or a service provider, and managed by the association, or a manager, she said the City can enforce, or the State can enforce, but if they don't, these people aren't being provided any services to help them live independently.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS (THOSE IN FAVOR OF STAFF'S DECISION) - REBUTTAL:

Atty. Sokul said that Atty. Hantz wants the ordinance to read a certain way, she's saying that only these six categories of things in certain provisions of them related to those six

categories qualify as elderly housing. He said that is not what the ordinance says. He said that even though she says that the State and Federal laws are enacted for a different purpose, the Nashua Zoning ordinance specifically refers to RSA 354-A:15. He said that that RSA is Tab 4 of his handout. He said that for purposes of this section, elderly housing is any housing categories and supportive facilities that are described below, that complies with the provisions of RSA 354-A:15, Housing for Older Persons.

Atty. Sokul said that if you look at 354-A:15, all this is about is the exemption from the Fair Housing Act. He said all it's about is the three types of categories that qualify. He said the first one is provided under any State or Federal program that the Secretary of US HUD the terms are specifically designed and operate to assist in elderly housing as defined in that State or Federal program. He said that we're not talking about that here. He said the second one is intended for solely occupied by persons 62 years and older. He said the third one is intended and operated for occupancy by at least one person age 55 or older, that is what we are talking about, that's what the ordinance allows. He said that the State Statute goes on to say in determining whether housing qualifies for persons 55 and over, the Commission shall adopt rules which require at least the following factors, the existence of significant facilities and services, that's what we've been talking about all night, those rules have expired, and thinks because they're inconsistent with Federal law. He said it goes on to say that at least 80% of the units are occupied by at least one person 55 years of age or older per unit, and the adherence to policies and procedures which demonstrate the intent by the owner or manager to provide housing for persons 55 years of age or older. He said that is what is required by the State, and even though those rules have expired, they are meeting, and going above and beyond the rules that existed before they expired. He said that housing shall not fail to meet the requirements for Housing for Older Persons by reason of A, which is irrelevant, and B unoccupied rules provided by such units are reserved for occupancy by persons who meet the age requirements. He said it says that any rule concerning the exemption available under this section shall be consistent with Federal law, which ties back to the Federal Statute and the Federal regs. He said the Federal regs requiring all those things expired because the Federal Government said that they were too restrictive, and so, the Nashua Ordinance talks about the Housing for Older Persons Act,

the Fair Housing Act, by cross-referencing those regs, and speaks specifically about 55 year old age restrictions, we wouldn't have all this talk about 55 year old age restrictions if 55 year old housing didn't comply with the regs. He said that older persons are exclusively age 55 and over. It is recognized that exclusive zoning for persons 55 and over promotes the general health and welfare.

Mr. Shaw asked if RSA 354-A:15 is expired, or just not applicable because of the Federal. He said Section 4A, the existence of significant facilities and services designed to meet the physical and social needs of older persons, or the provision of such facilities, and the housing for older persons, he asked if it is in effect.

Atty. Sokul said RSA 354-A:15 is in effect. He said if you turn to page 5, these were the rules that were promulgated under RSA 354-A:15, with respect to 55 and over housing. He said if you look at 354-A:15 IV, it says in determining whether housing qualifies as housing for 55 and over, the Commission shall adopt rules which require at least the following factors. He said that 302 - 03, which is Tab 5, was those rules until 2006, at which time they expired. He said that's one of the reasons why the City is looking to amend the ordinance, because it understands that there is a gap by cross-referencing that RSA and the rules.

Mr. Shaw asked that without those rules, specifically cited any longer available, one is left with the sole interpretation of those couple sentences in 4A.

Atty. Sokul said he looked at VI under RSA 354-A:15, and it says that any rule concerning the exemption under this section shall be consistent with Federal law. He said that if you go back and look at the Federal law, they've repealed all of the rules and regulations concerning those categories of things that need to be provided as being too restrictive and too onerous.

Mr. Shaw asked that the Federal law still cites something along the lines of significant facilities and services, or is it silent on that.

Atty. Sokul said no, it's gotten rid of the whole concept of significant facilities and services. He said in Tab 1, at the bottom, going to page 2, he said that there are three different

kinds, "a" under 2a, provided by any State or Federal programs, "b" intended for solely occupied by persons age 62 years of age or older, or "c" intended for persons age 55 or older, and, at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older. He said that housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under the subparagraph, which means to be housing for over 55, and three, that the housing facility or community complies with rules issued by the Secretary for verification of occupancy, and other various verification requirements to prove out that they're meeting the 55 and over, and they'll have to agree to do it at least once a year, and provide the results to the City of Nashua.

Mr. Shaw asked if we are left with the Federal statute, if we're left with 2-A on that first page 1, that only says provided under any State or Federal program that the Secretary determines if specifically designed and operated to assist elderly persons. He said that seems to be the extent of anything that alludes to services or anything special regarding elderly persons.

Atty. Sokul said that they are under "C". He said that A is one category, B is all 62 and over, and then C, intended and operated for occupancy for persons 55 and older, that's the category they are. He said if you look at Tab 2, this is the Federal regs that were adopted in 1999, and you can see in the background section, he said he circled something, a facility or community seeking to claim the 55 and older exemption show three factors; 1) that the housing is intended and operated for persons 55 years and older, 2) that at least 80% of the occupied units be occupied by at least one person age 55 or older, and 3) that the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption, but you need to advertise it as housing for older persons. He said that one significant change is the elimination of significant facilities and services previously required by the Act to meet the 55 and older exemption. He said that the section originally required that housing designed for persons who are 55 and older provide significant facilities and services, specifically designed to meet the physical and social needs of older persons, and that was eliminated by HOPA, Housing for Older Persons Act, which was adopted in 1995, and these regs became effective in 1999.

Mrs. MacKay asked if the State had a budget, and legislature doesn't vote on it, and you don't have a budget, you run by the budget that was in existence, even though it expired, you're still running concurrently under that budget. She said that Federal regs, such as VR, that was expired for years, but everybody still followed the rules that were in existence, and if the Federal law does that, and just makes that assumption, that you follow what was before you do nothing, and the State of New Hampshire follows the same rules, why wouldn't we.

Atty. Sokul talked to the Executive Director of the NH Housing Commission, via email, and said that those things there are still for guidance, but because they're expired, they are not enforceable by the State. He said that the difference is because the State law, which calls for the promulgation of rules about the over 55 community, expressly states those rules need to be consistent with Federal law, and now, if those rules were still in effect, they would be inconsistent with Federal law. He said that the regs that were repealed in 1999, he said he didn't know why those regs were allowed to expire, and have not been replaced, but logic says that because the State statute, which authorizes the rules to be promulgated, and says that those rules must be consistent with Federal law, and now they wouldn't be. He said that this is very difficult for a lawyer trying to advise a client what to do, and that's one of the reasons why they wanted to provide more than what was previously required before it expired. He said that they've gone above and beyond. He said that the Ordinance specifically refers to over-55 housing, and refers to the State statute, which defines it. He said he doesn't think that there is any ambiguity there.

Mrs. MacKay said that there may be some ambiguity about the development or redevelopment issue.

Atty. Sokul said that issue is not before the Board tonight, and it was never raised in the Appeal.

Mr. Shaw asked what VR stands for.

Mrs. MacKay said it is Vocational Rehabilitation.

Public Hearing closed.

MOTION by Mr. Currier to suspend the rules to understand what Atty. Hantz question was asking about.

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0.

Atty. Hantz said she had a question on the density bonus issue.

Mr. Shaw said that he doesn't believe the Board should bring this up again.

Mr. Currier said that we've already discussed the density bonus issue. He said that the Board won't hear anything else, and will move on to the Public Meeting.

Ms. Vitale said it's already been discussed and clarified.

Mr. Boucher said no.

Mrs. MacKay said she would have went with it.

Mr. Currier said it would be four opposed, so we won't hear it.

Mr. Shaw said in all his time on the Board, he would like some legal counsel to assist us with interpreting the case. He said he's not certain that he wants to advocate for that this time, but is finding that there is a lot of interesting and compelling testimony by a couple attorneys who do this all the time, and feels like there are some real legal nuances to how to interpret this. He said that there are layers of local, State, and Federal law, all intertwined, and it's daunting. He said the Board may need more time to deliberate, there was a lot of information tonight, and didn't think that the Board is ready to make a decision.

Mr. Falk said for other legal follow-up, Corporation Counsel for the City did make a determination that this did meet the elderly housing ordinance, it was already done.

Mr. Currier said that while he appreciates that Corporation Counsel has already weighed in, we are being asked to potentially override. He said that this is probably the most technical thing he's ever sat on, and a lot of layers, and a lot of fresh information, and it's difficult to process it all right now and do diligence to render a decision.

Mrs. MacKay said that Corporation Counsel rendered a decision based upon arguments presented by one attorney. She said if both attorneys were in the room discussing back and forth the legalities that we may be missing, she wondered what the decision would have been then. She said that was based upon a one-sided argument in that room, in that present tense, and we heard a two-sided argument with rebuttal, and everyone in that room didn't hear rebuttal, they only heard justification on the application. She said she'd love to sit with Corporation Counsel, but said that she's being asked to make a decision that was just based on one side of the coin, and now we have two.

Ms. Vitale said that there are quite a lot of things to go over, and what we're looking at, is if this development will provide significant facilities and services designed to meet the physical and social needs of older persons. She said she'd like to go back and review the testimony and see what points she can pick out that will answer that for a decision.

Mr. Boucher said it's very clear to him, that having read this ordinance over and over, it is confusing with all the State and Federal laws and the City ordinance. He said that yes, there can be arguments that could be for interpretation, and said it's clear to him whether or not it's clear in the ordinance, but looking at it strictly for what it says, that there is credible evidence in the ordinance that this complies as elderly housing. He said that today, as it stands, he said that this follows the ordinance, but this ordinance is written for the lay person, which is why we're here, we're not city employees, it's written so that most lay people can understand the language in here. He said that there was great testimony from both the opposition and the applicant. He said the question is why we are here, we're here to decide on the administrative decision, and finds that whether it's fortunate or unfortunate of how people look at it, he said that he finds that it meets the ordinance.

Mrs. MacKay said that Mr. Boucher's point on page 18 of 57, where the provisions of the division shall apply to projects consisting of more than 30 units in the case of new development, or more than 10 units in the case of redevelopment, and didn't see it as redevelopment. She said its one tiny little house, sitting on a big piece of land, and then it would be taken down and five big buildings would be there, she said that that is new development, it's not redevelopment, they're not repurposing something that's there, they're taking it down and re-doing.

She said she doesn't think it meets the needs of elderly housing.

Mr. Boucher said that is not what we are here to debate. He said we are here for something else, and said he's not using that at all to make his decision.

Mrs. MacKay said that in her mind, this does not meet elderly housing.

Mr. Shaw said if the Board looks at what we are being asked, if the proposed elderly housing development will provide significant facilities and services designed to meet the physical and social needs of older persons. He said he's still struggling with that, because he agreed that in some regards, that the criteria was put there, and now it's being judged against as there is vagueness, and thinks that some of what the applicant has proposed is of limited benefit, and questioned whether there is significant things to meet that question. He said about the development versus redevelopment issue, he said he's struggling with that in one sense, in the terms of the applicability, because it is stated as the where permitted, so that criteria needs to be met. He said he doesn't know if they should be considering that, because is the question even applicable, or maybe this is a whole separate item that interested parties can pursue in a different appeal regarding this case at some point.

Mr. Currier said that he agrees that some of the points, or benefits or services provided, some are fairly limited to what they really provide, but then what we have before us is what the law is. He said he's struggling to do diligence with all we received tonight, and a thought is to allow some down time and pick this up at the next meeting. He said right now he's feeling rushed, and would like a chance to read all of this over, and come back in three weeks.

Mr. Currier said he'd like to table the Public Meeting, no Public Hearing, and just continue this discussion and not take any more testimony.

Mr. Shaw said he'd like to have that happen too, there was a lot of information and this is complicated.

MOTION by Mr. Currier on behalf of the applicant to table the Public Meeting to a date certain of February 14, 2017 to allow us to review a rather large amount of material we have tonight to do due diligence, and likely render a decision at that time.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1. (Mr. Boucher).

Mr. Shaw said that there will not be any more public testimony at that meeting; all the Board will be doing is continuing the deliberation.

Mr. Currier said that everyone is welcome to attend.

Mr. Shaw said that there will not be any conversations with any other member or any other attorney, it is not legal and it will not occur, it is against the rules.

MISCELLANEOUS:

REGIONAL IMPACT:

There is additional time in the schedule, Mr. Falk said he'd forward the agenda to the Board when it is available.

MINUTES:

None.

BY-LAWS:

Mr. Falk said that they're still looking at the comments that were brought up at the last meeting

ADJOURNMENT:

Mr. Currier called the meeting closed at 10:20 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing